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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/863,182	05/27/97	PHILIPPE	J XI/P3139US1

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15M1/0114

EXAMINER

ART UNIT	PAPER NUMBER
1502	3

DATE MAILED: 01/14/98

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

#### OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 5/27/97
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- ☒ Claim(s) 1-47 is/are pending in the application.
- ☐ Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-47 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

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Receipt is acknowledged of Prior Paper (May 27, 1997.

Claims 1-17 and 21-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention..

"Or other", "derivatives" (claim 11) "in particular", "such as", preferably", and "characterized", "high degree". It is unclear if "proportion" (claim 32) should be amount or concentration. It is unclear how "efficacy" is to be interpreted; thus "95%" is indefinite as there is no baseline efficacy. There is no "long lasting" antecedent for claims 43-46.

Claims 1-47 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to

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enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

One in that art is given insufficient information to identify intended use concentrations and conditions, to meet the requirement "ensure efficacy", or "for more than months", claims 32-38 specify a proportion but do not indicate of what to what. Efficacy "is inoperable, as it is not defined: It is unclear why the proviso of claims 1, 21 and 22 exist.

***Claim Rejections - 35 U.S.C. § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Buntain et al. EP 0,295,117.

See Example 12, page 11. The instant claim 11 derivation and compound at 0.5-25% of PVC is prepared as collar or as an ear tag, for domestic animals/dogs. Since the compound, use and host dog species of, "domestic animals" are the instant, characteristics and attributes also are, inherently. Further compound forms of the instant claims are at pages 1-4; species controlled at pages 4-6, including arthropods rectors, (page 6) fleas and ticks.

Claims 1-47 are rejected under 35 U.S.C. 102(e) as being anticipated by Senbo - 5,567,129.

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Show the instant compounds (columns 1-2) and concentrations (column 4, lines 7-12) and devices (column 3) for protection against the same pests (column 2, bottom) as the instant claims, thus, inherently, providing the same degree of protection.

***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4~~7~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over Buntain et al., Huang et al. and Senbo - 5,567,429.

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As shown above, Buntain and Senbo provide the same compounds, shown effective against the same arthropods, shown as rectors, thus, obvious to use in control devices, as is known in the art. There is no distinguishing disclosure of the instant composition as providing any unusual and/or expected results obtained since the prior art is well aware of the use of the instant pesticides to control pests. No criticality or objective showing of unobvious or unexpected results are presented by applicant.

The selection of active ingredients and polymer are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the concentration and form of each ingredient to optimize the effect desired, and the use of ingredients for the functionality for which they are known to be used is not a basis for patentability.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday-Friday from 7:00 a.m. to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page, can be reached on (703) 308-2927. The fax phone number for this Group is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2351.

**Neil Levy:cb**  
Primary Examiner

Monday, January 5, 1998

  
NEIL S. LEVY  
PATENT EXAMINER  
GROUP 1500